

**Improved Case Monitoring and Taxpayer
Awareness Activities Can Enhance the
Effectiveness of the Tax Practitioner
Disciplinary Proceedings Program**

January 2001

Reference Number: 2001-10-027

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

January 12, 2001

MEMORANDUM FOR COMMISSIONER ROSSOTTI

A handwritten signature in cursive script, reading "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Improved Case Monitoring and Taxpayer Awareness Activities Can Enhance the Effectiveness of the Tax Practitioner Disciplinary Proceedings Program

This report presents the results of our review on the effectiveness of the Tax Practitioner Disciplinary Program in identifying and addressing violations of the rules prescribed for practitioners.

In summary, we found that the current automated case tracking system was not used to monitor program activities and resources, and was not always updated or accurate. We also found that the Internal Revenue Service (IRS) web site, publications, and forms available to taxpayers did not provide information on how to report allegations of tax practitioner violations. We recommended that the Director of Practice should upgrade the automated case tracking system to monitor progress of cases and program resource requirements, and provide taxpayers with the information they need to file complaints about tax practitioners.

The IRS agreed with the recommendations. Management's comments have been incorporated into the report where appropriate, and the full text of their comments is included as an appendix.

Copies of this report are also being sent to the IRS managers who are affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions, or your staff may call Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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Effectiveness of the Tax Practitioner Disciplinary Proceedings Program**

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Executive Summary

The Director of Practice is responsible for enforcing Treasury regulations¹ governing tax practitioners who practice before the Internal Revenue Service (IRS). The term “Practice” includes preparing and filing documents with the IRS, communicating with the IRS for a taxpayer, and representing a taxpayer at conferences with the IRS. The Director of Practice is responsible for making determinations on applications for enrollment to practice and conducting disciplinary proceedings. Tax practitioners found to be in violation of the rules for practice, shown to be incompetent or disreputable, or who willfully and knowingly mislead or threaten a client can be subject to disciplinary actions. These actions can include reprimands, suspensions, or disbarments.

The objective of this audit was to determine the effectiveness of the disciplinary proceedings program in identifying and addressing violations of the rules prescribed for practice.

Results

The overall success of the disciplinary proceedings program is dependent on the IRS timely identifying and initiating corrective action against incompetent or disreputable tax practitioners to protect the public from further harm. In this regard, the Director of Practice’s disciplinary proceedings program suspended or disbarred 77 tax practitioners between October 1998 and December 1999. However, a lack of adequate staffing in the Director of Practice’s Office resulted in delays in assigning and processing complaints about tax practitioners. To help relieve the backlog of work in the Director of Practice’s Office, the Deputy Commissioner Operations assigned five additional attorneys to the Director of Practice in April 2000. It will be difficult to determine whether or not the additional resources will reduce the processing times because the Director of Practice’s Office does not maintain information necessary for monitoring case activity and tracking time expenditures. In addition, the Director of Practice needs to provide taxpayers with more guidance on how to file complaints about tax practitioners.

We believe the Director of Practice can enhance the effectiveness of the disciplinary proceedings program by:

- Upgrading the automated case tracking system to monitor the progress of cases and program resource requirements.

¹ Treasury Department Circular No. 230 (Rev.7-94).

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- Providing taxpayers with the information needed to report allegations of violations by tax practitioners who practice before the IRS.

Automated Case Tracking System Should Be Upgraded to Monitor Case Activity and Resources

The current automated case tracking system was not used to monitor program activities because the system did not provide management reports and the system contained inaccuracies. Although the system has the capacity to generate reports to assist in monitoring cases and resources, the programming needed for that purpose had not been completed. Also, the system was not always updated or accurate, and an inventory reconciliation had not been conducted since the system was established in 1998.

The automated case tracking system was not used to identify delays in assigning cases for further review and in issuing letters acknowledging receipt of taxpayer and employee allegations or for highlighting cases open for long periods of time. Additionally, the system did not capture data on the staff days expended working cases to enable management to determine program costs and resource requirements.

For example, the automated case tracking system could have been used to identify delays in assigning tax practitioner allegations warranting further review. Between October 1, 1998 and December 8, 1999, it had taken an average of 110 days for allegations received to be assigned for further review. Delays in working allegations could allow incompetent or disreputable tax practitioners to continue practices that could further harm taxpayers and the IRS.

Taxpayers Should Be Provided Information on How to Report Allegations of Tax Practitioner Violations

Between October 1, 1998 and December 8, 1999, 24 taxpayers reported allegations of tax practitioner violations to the Director of Practice. However, this number may not be representative of actual violations because there was no information readily available to the taxpaying public regarding how to report violations by tax practitioners who practice before the IRS. For example, the IRS web site, publications, and forms available to taxpayers did not provide information on how to report allegations of tax practitioner violations. While some IRS employee manuals outlined procedures for employees to report allegations of tax practitioner violations, the Assistant Commissioner (Customer Service) and National Taxpayer Advocate employees assisting taxpayers on the telephone did not have any information available to taxpayers on how to report these allegations.

The Director of Practice stated that staffing resources limited his ability to make information available to taxpayers on how to report allegations of tax practitioner violations. The Director of Practice also expressed concern that proactive taxpayer

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outreach programs could increase the reports of allegations beyond the capacity of the disciplinary proceedings program staff to handle them. While encouraging more taxpayer input could result in additional resource needs, we believe this action is necessary because, without input from the public, the Director of Practice cannot totally fulfill his duties to protect taxpayers from incompetent or disreputable tax practitioners.

Summary of Recommendations

The Director of Practice should upgrade the automated case tracking system to provide reliable data needed to monitor case activities and resource requirements. The Director of Practice should also provide the public information on how to report violations on the IRS web site and in IRS publications.

Management's Response: IRS management agreed with the recommendations and is taking the appropriate corrective actions. IRS management plans to increase staffing and technical support, which will allow the Director of Practice to upgrade the automated case management system and conduct an annual workload and staffing analysis. The Senior Counselor to the Commissioner and the Director of Practice will engage in outreach activities and extend communications to the general public. Additionally, they will work with Communications and Liaison to publicize the role of the Director of Practice. IRS management reiterated that the Director of Practice is not necessarily able to address all of the general public's concerns. This is because paid tax-return preparers (who are not lawyers, Certified Public Accountants, or Enrolled Agents) are not covered by the jurisdiction of the Director of Practice. Management's complete response to the draft report is included as Appendix IV.

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Objective and Scope

Our objective was to determine the effectiveness of the disciplinary proceedings program.

The objective of this audit was to determine the effectiveness of the disciplinary proceedings program in identifying and addressing violations of the rules prescribed for practice.

Our audit included tests to determine if taxpayers and Internal Revenue Service (IRS) employees were provided sufficient information on how to report tax practitioner violations. We also determined if the Director of Practice had taken prompt actions on reports of allegations. Lastly, we evaluated the accuracy of the automated case tracking system.

This audit was performed in accordance with *Government Auditing Standards* between December 1999 and June 2000. We conducted our audit at the office of the Director of Practice in Washington, DC.

Details of our audit objective, scope, and methodology are presented in Appendix I. Major contributors to this report are listed in Appendix II.

Background

The Director of Practice is responsible for enforcing Treasury regulations¹ governing tax practitioners who practice before the IRS. The term “Practice” includes preparing and filing documents with the IRS, communicating with the IRS for a taxpayer, and representing a taxpayer at conferences with the IRS. Simply preparing a tax return or furnishing information to the IRS is not considered as practicing before the IRS. The Director of Practice is responsible for making determinations on applications for enrollment to practice and conducting disciplinary proceedings related to those

¹ Treasury Department Circular No. 230 (Rev.7-94).

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allowed to practice. Tax practitioners found to be in violation of the rules for practice, shown to be incompetent or disreputable, or who willfully and knowingly mislead or threaten a client can be subject to disciplinary actions. These actions can include reprimands, suspensions, or disbarments. In addition to the disciplinary proceedings program, the Director of Practice is responsible for other programs including the Electronic Filer Appeals, the Enrolled Agent, the Joint Board for the Enrollment of Actuaries, and Conference and Practice Requirements.

In August 2000, the IRS transferred the Director of Practice from the Chief, Appeals to the Office of the Commissioner of the IRS.

Results

The overall success of the disciplinary proceedings program is dependent on the IRS timely identifying and initiating corrective action against incompetent or disreputable tax practitioners to protect the public from further harm. In this regard, the Director of Practice's disciplinary proceedings program suspended or disbarred 77 tax practitioners between October 1, 1998 and December 8, 1999. However, a lack of adequate staffing in the Director of Practice's Office contributed to delays in assigning and processing complaints about tax practitioners.

To help relieve the backlog of work in the Director of Practice's Office, the Deputy Commissioner Operations assigned five additional attorneys to the Director of Practice in April 2000. It will be difficult to determine whether or not the additional resources will reduce the processing times because the Director of Practice's Office does not maintain information necessary for monitoring case activity and tracking time expenditures. In addition, the Director of Practice needs to provide taxpayers with more guidance on how to file complaints about tax practitioners.

Improved Case Monitoring and Taxpayer Awareness Activities Can Enhance the Effectiveness of the Tax Practitioner Disciplinary Proceedings Program

We believe the Director of Practice can enhance the effectiveness of the disciplinary proceedings program by:

- Upgrading the automated case tracking system to monitor the progress of cases and program resource requirements.
- Providing taxpayers with the information needed to report allegations of violations by tax practitioners who practice before the IRS.

Automated Case Tracking System Should Be Upgraded to Monitor Case Activity and Resources

The current automated case tracking system was not used to monitor program activities because the system did not provide management reports and the system contained inaccuracies. Although the system has the capacity to generate reports to assist in monitoring cases and resources, the programming needed for that purpose had not been completed. Also, the system was not always updated or accurate, and an inventory reconciliation had not been conducted since the system was established in 1998. Our reconciliation of allegation cases assigned to the Director of Practice and his two attorneys during the period covered by this audit identified that one out of four cases was missing or the information recorded on the system was inaccurate.

The automated case tracking system recorded allegation information including date received, assigned, closed, and the number of the attorneys or appeals officers assigned to the case. By querying the system, the paralegal in the Director of Practice's Office periodically prepared reports outlining beginning and ending inventory receipts and closures.

The management information system was not used to identify delays on cases.

However, the automated case tracking system was not used to identify delays in assigning cases for further review and in issuing letters acknowledging receipt of

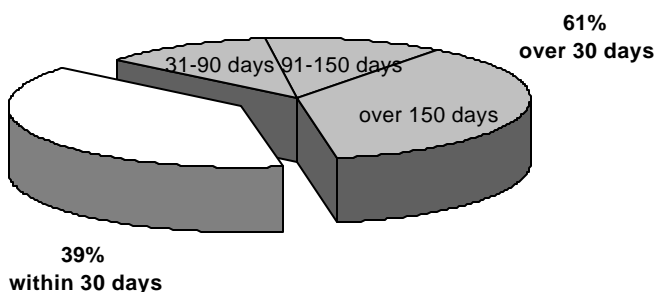
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Allegations of tax practitioner violations were not promptly assigned for further review.

taxpayer and employee allegations, or for highlighting cases open for long periods of time. The system also did not capture data on the staff days expended in working cases to enable management to determine program costs and resource requirements.

For example, it took an average of 110 days for allegations to be assigned to an attorney or an appeals officer between October 1, 1998 and December 8, 1999. The graph below outlines the time frames for assigning allegations for further review.

Time Frames For Assigning Allegations



In October 1999, the Chief, Appeals conducted an operational review of the Director of Practice's Office, including the disciplinary proceedings program. The Chief, Appeals found that there were delays in assigning and working allegations against tax practitioners. With respect to the cause of these delays, the Chief, Appeals' report on the operational review concluded that "the Director of Practice is understaffed." In April 2000, the Deputy Commissioner Operations authorized five additional attorney positions for the Director of Practice's Office. This brought the Director of Practice's authorized staffing for attorneys to eight positions.

However, we were not able to determine whether this was the appropriate staffing level for the disciplinary proceedings program because the Director of Practice did not maintain information on the staff days expended on working cases or conduct any analysis to determine the resources required to deliver the program. In this

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regard, the assigned attorneys were not required to track or report the staff days they expended on working Director of Practice cases. Additionally, while the appeals officers recorded staff days expended on working cases on their monthly time reports, this information was not reported to the Director of Practice.

Timely and accurate case information would assist the Director of Practice in managing the disciplinary proceedings program, ensuring that allegations warranting further review are promptly assigned, and that overage cases are identified for appropriate actions. Also, by capturing and analyzing information on the staff days expended on cases, the Director of Practice could more readily determine the cost and resource requirements of the program

Recommendations

1. The Director of Practice should upgrade the automated case management system to provide more timely and accurate data on case activities and the use of program resources. The reports should identify delays in assigning cases for further review, delays in issuing letters acknowledging receipt of taxpayer and employee allegations, and highlight cases open for long periods of time. The reports should also capture data on staff days expended to determine program costs and resource requirements.
2. The Director of Practice should conduct an annual workload and staffing analysis to identify the staffing necessary to take prompt action on allegations of tax practitioner violations.

Management's Response: IRS management agreed that given increased staffing and technical support, the Director of Practice can upgrade the automated case management system and conduct annual workload and staffing analysis. The IRS will increase staffing and meet with Information Services to ensure that the Director of Practice has the best available technology to manage the relevant data.

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Taxpayers Should Be Provided Information on How to Report Allegations of Tax Practitioner Violations

Taxpayers should be provided information on how to report allegations of tax practitioner violations.

Although taxpayers were sometimes the source of complaints, most disciplinary proceedings were based on allegations from IRS employees located in field office functions such as Collection, Criminal Investigation, and Examination. Between October 1, 1998 and December 8, 1999, taxpayers reported only 24 of the 227 allegations received by the Director of Practice.

We do not believe the 24 allegations are representative of actual violations because there was no information readily available to the taxpaying public on how to report complaints about tax practitioners to the IRS.

The IRS web site, publications, and forms available to taxpayers did not provide information on how to report allegations of tax practitioner violations. The Assistant Commissioner (Customer Service) and National Taxpayer Advocate employees assisting taxpayers on the telephone did not have any information available to them in their reference manuals for advising taxpayers on how to report allegations of tax practitioner violations or on the role of the Director of Practice.

In contrast, some IRS employee manuals in functions such as Appeals, Collection, and Examination did outline procedures for IRS employees to report allegations of tax practitioner violations to the Director of Practice. As a result, IRS employees originated 203 of the 227 allegations of tax practitioner violations that were reported to the Director of Practice between October 1, 1998 and December 8, 1999.

The Director of Practice stated that staffing resources limited his ability to make information available to taxpayers on how to report allegations of tax practitioner violations. Additionally, the Director of Practice expressed concern that proactive taxpayer outreach programs could increase the number of allegations

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beyond the capacity of the disciplinary proceedings program staff to handle them. The Director of Practice stated that taxpayers have not been a productive source for allegations of tax practitioner violations, and he believes taxpayers would refer complaints that he could not remedy.

In our opinion, without the input of the taxpaying public, the Director of Practice cannot totally fulfill his duties to institute and provide for the conduct of a disciplinary proceedings program that protects taxpayers from incompetent and disreputable tax practitioners.

Recommendations

3. The Director of Practice should provide information to the public on the IRS web site and in IRS publications on how to report violations by tax practitioners.
4. The Director of Practice should develop a comprehensive communications strategy to create an awareness of and expand outreach activities to taxpayers on the disciplinary proceedings program.

Management's Response: The Senior Counselor to the Commissioner and the Director of Practice will engage in outreach activities and extend communications to the general public. They will work with Communications and Liaison to publicize the role of the Director of Practice. IRS management reiterated that the Director of Practice is not necessarily able to address all of the general public's concerns. This is because paid tax-return preparers (who are not lawyers, Certified Public Accountants, or Enrolled Agents) are not covered by the jurisdiction of the Director of Practice.

Conclusion

The Director of Practice can enhance the effectiveness of the disciplinary proceedings program by upgrading the automated case tracking system to provide more

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accurate and timely data on case activity and program resource requirements, and by providing taxpayers with the information needed to report allegations of violations by tax practitioners who practice before the IRS.

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Appendix I

Detailed Objective, Scope, and Methodology

The objective of this review was to evaluate the effectiveness of the Internal Revenue Service's (IRS) program for identifying and addressing allegations of tax practitioner violations. To accomplish our objective, we conducted the following tests:

- I. Identified the information provided to taxpayers and IRS employees concerning how to report allegations of tax practitioner violations. Specifically, we researched the IRS web site, the Internal Revenue Manual, and IRS forms and publications.
- II. Identified outreach activities conducted by the Director of Practice to inform taxpayers, tax practitioners, and IRS employees of how to report allegations of tax practitioner violations.
- III. Interviewed the Chief, Appeals, the Director of Practice and staff, and appeals officers to identify the procedures for processing allegations.
- IV. Analyzed a database of the 227 allegations received from October 1, 1998 to December 8, 1999, to determine if allegations were timely assigned and forwarded for further review. Of the 227 allegations received, 154 had been assigned, 36 had not yet been assigned, and 37 did not warrant further review. We initiated on-site audit work on December 8, 1999.
- V. Reconciled the 197 allegations assigned on the database as open to the Director of Practice and 2 attorneys to the cases in their possession to determine whether the allegation cases were accurately recorded on the database. Some of these cases had been received and assigned prior to October 1, 1998.
- VI. Identified the staff assigned to work the disciplinary proceedings allegations during Calendar Year 1999.

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Appendix II

Major Contributors to This Report

Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)

Mary V. Baker, Director

Alan R. Beber, Senior Auditor

Abraham B. Millado, Senior Auditor

Midori Ohno, Auditor

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Appendix III

Report Distribution List

Senior Counselor to the Commissioner N:C:SC
Chief, Appeals AP
Director of Practice N:C:SC
Director, Legislative Affairs CL:LA
Audit Liaison: Chief, Appeals AP
Office of Management Controls N:CFO:F:M
Chief Counsel CC
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O
National Taxpayer Advocate TA

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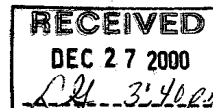
Appendix IV

Management's Response to the Draft Report




DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

December 27, 2000



MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Michael E. Shaheen Jr. 
Senior Counselor to the Commissioner

SUBJECT: Draft Audit Report – Improved Case Monitoring and Taxpayer Awareness Activities Can Enhance the Effectiveness of the Tax Practitioner Disciplinary Proceedings Program (Audit No. 200010010).

We appreciate the opportunity to respond to your "Draft Audit Report – Improved Case Monitoring and Taxpayer Awareness Activities Can Enhance the Effectiveness of the Tax Practitioner Disciplinary Proceedings Program (Audit No. 200010010)."

The Office of the Senior Counselor is a new office created during the overall Internal Revenue Service restructuring. The Senior Counselor's Office is designed to advise the Commissioner on various agency-wide issues, including oversight of the Office of the Director of Practice ("ODP"). This office concurs with TIGTA's recommendations regarding the ODP to:

1. Upgrade the automated case management system.
2. Conduct an annual workload and staffing analysis.
3. Expand interaction with the public.

Given increased staffing and technical support, the ODP can implement items one and two. The ODP is increasing its staffing so it can better address the many issues over which it acts. As the staffing increases, the ODP and this office intend to continue evaluating the staffing needs of the ODP and suggesting appropriate changes.

In expanding the ODP's interaction with the public, TIGTA recommended the ODP:

- Publicize how to report violations by tax practitioners.
- Develop a comprehensive communications strategy regarding its disciplinary program.

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Both goals are laudable, and we should pursue them; they will not, however, address all complaints from the general public, because most individual taxpayers receive substantial services from unlicensed tax-return preparers.

IDENTITY OF RECOMMENDATION #1

Upgrade the automated case management system.

ASSESSMENT OF CAUSE(S)

n/a

CORRECTIVE ACTION(S)

Increase staffing and meet with Information Services to ensure the ODP has the best available technology to manage the relevant data.

IMPLEMENTATION DATES

n/a

RESPONSIBLE OFFICIALS

Director of Practice

CORRECTIVE ACTION(S) MONITORING PLAN

The Director of Practice will follow up with this office and Information Services.

IDENTITY OF RECOMMENDATION #2

Conduct an annual workload and staffing analysis.

ASSESSMENT OF CAUSE(S)

n/a

CORRECTIVE ACTION(S)

Conduct an annual workload and staffing analysis.

IMPLEMENTATION DATES

n/a

RESPONSIBLE OFFICIALS

Director of Practice

CORRECTIVE ACTION(S) MONITORING PLAN

The Director of Practice will follow up with this office.

IDENTITY OF RECOMMENDATIONS #3 & #4

Publicize how to report violations by tax practitioners, and develop a comprehensive communications strategy regarding its disciplinary program.

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3

ASSESSMENT OF CAUSE(S)

n/a

CORRECTIVE ACTION(S)

One of the ways this office and the ODP currently engage in public outreach is through public speaking. This is an effective means of communicating with practitioners. Indeed, this office, during its relatively short tenure, has already met with the largest constituent groups. We want to continue this practice and would, following TIGTA's recommendations, extend this and other communications to the general public. The most important issue about which members of the general public should know, however, is that the ODP is not necessarily able to address all their concerns. This is because paid tax-return preparers (who are not lawyers, CPAs, or Enrolled Agents) are not covered by the jurisdiction of the Director of Practice. As we increase public communication, we intend to work with Communications and Liason to publicize the ODP's role and not to create false expectations. Thus, this Office strongly supports starting a system to protect the public by extending the ODP's jurisdiction to cover these service providers.

IMPLEMENTATION DATES

n/a

RESPONSIBLE OFFICIALS

Special Counsel to the Senior Counselor

CORRECTIVE ACTION(S) MONITORING PLAN

The Special Counsel to the Senior Counselor will follow up with the Senior Counselor and Communications and Liason.

Office of Audit Comment: This response did not include implementation dates. After we brought this omission to management's attention, the Office of the Senior Counsel subsequently proposed March, 2002, as the completion date for each of the action items.